

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BENNYREY R.,

Plaintiff,

-v-

5:22-CV-1273

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

APPEARANCES:

OF COUNSEL:

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DAVID N. HURD
United States District Judge

ORDER ON REPORT & RECOMMENDATION

On November 29, 2022, plaintiff Bennyrey R.¹ (“plaintiff”) filed this civil action seeking review of the final decision of defendant Commissioner of Social Security (“Commissioner”) finding him no longer entitled to receive Supplemental Security Income (“SSI”) under the Social Security Act (the “Act”). Dkt. No. 1. Plaintiff also sought leave to proceed *in forma pauperis* (“IFP Application”). Dkt. No. 3. Thereafter, U.S. Magistrate Judge Miroslav Lovric granted plaintiff’s IFP Application, Dkt. No. 5, the Commissioner filed a certified copy of the Administrative Record, Dkt. No. 9, and both parties briefed the matter in accordance with General Order 18. Dkt. Nos. 12, 17, 20.

On October 19, 2023, Judge Lovric advised by Report & Recommendation that plaintiff’s motion be denied, the Commissioner’s motion be granted, and that the Commissioner’s final decision be affirmed. Dkt. No. 21. Plaintiff has filed objections, Dkt. No. 22, which have been briefed, Dkt. No. 23.²

In his objections, plaintiff argues that Judge Lovric incorrectly concluded that the ALJ properly evaluated a medical opinion co-signed by Dr. Pratts and Social Worker Harkness. Dkt. No. 22. In plaintiff’s view, the precedent

¹ In accordance with a May 1, 2018 memorandum issued by the Judicial Conference’s Committee on Court Administration and Case Management and adopted as local practice in this District, only the first name and last initial of plaintiff will be mentioned in this opinion.

² This matter was initially assigned to the Honorable Gary L. Sharpe, Senior U.S. District Judge. It has been reassigned to this Court. Dkt. No. 24.

on which Judge Lovric relied; *i.e.*, a case called *Loucks v. Kijakazi*, actually supports a remand of this action for further administrative proceedings.

The Commissioner responds that plaintiff's objection is more or less just a recycled version of the same arguments he already presented to Judge Lovric in his opening briefing. Dkt. No. 23. As the Commissioner explains, other Courts in this District have already rejected the restrictive, crabbed view of *Loucks* advanced by plaintiff in his objections. *Id.*

Upon *de novo* review, Judge Lovric's Report & Recommendation is ("R&R") accepted and will be adopted. *See* 28 U.S.C. § 636(b)(1)(C). There is no error in Judge Lovric's conclusion that the ALJ applied the correct legal standards in ultimately discounting the opinion co-offered by Pratts and Harkness. And there is no indication the ALJ committed error, reversible or otherwise, in choosing instead to rely on psychological opinions offered by the examining and non-examining consultants. In short, a review of plaintiff's objections confirms that there is no good reason to second-guess the R&R's conclusions on these contested points. Accordingly, the R&R is accepted and will be adopted in all respects.

Therefore, it is

ORDERED that

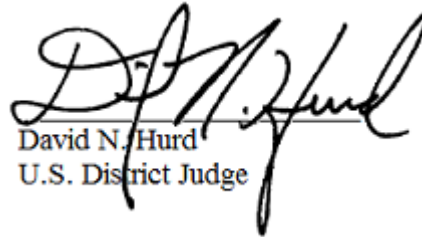
1. The Report & Recommendation is ACCEPTED;
2. Plaintiff's motion is DENIED;

3. The Commissioner's motion is GRANTED;
4. The Commissioner's decision is AFFIRMED; and
5. Plaintiff's complaint is DISMISSED.

The Clerk of the Court is directed to terminate the pending motion, enter a judgment accordingly, and close the file.

IT IS SO ORDERED.

Dated: February 20, 2024
Utica, New York.



David N. Hurd
U.S. District Judge